

Research & Occasional Paper Series: CSHE.2.03



UNIVERSITY OF CALIFORNIA, BERKELEY
<http://ishi.lib.berkeley.edu/cshe/>

**IN PRAISE OF WEAKNESS:
CHARTERING, THE UNIVERSITY OF THE UNITED STATES,
AND DARTMOUTH COLLEGE***

March 2003

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ABSTRACT

This paper explores the proposition that if American higher education has been broadly successful in serving its society, it is in large part because American colleges and universities, and the system of which they are part, were created under conditions of weakness, both academic and financial.

Weakness and poverty have had a bad press in secular societies, and mostly deservedly. But in this paper I want to explore the proposition that if American higher education has been broadly successful in serving its society, it is in large part because American colleges and universities, and the system of which they are part, were created

* Forthcoming in *Higher Education Policy*, 2003. This paper draws in part on my paper with Sheldon Rothblatt. "Government Policies and Higher Education: A Comparison of Britain and the United States 1630-1860." in *The Sociology of Social Reform*, edited by Colin Crouch and Anthony Heath. Oxford: Oxford University Press, 1992. An earlier version of this paper was read at The Perlman Center for Teaching and Learning, Carleton College, April 30, 2002.

under conditions of weakness, both academic¹ and financial. I want to do this by reference to the transformation between the American Revolution and the Civil War of the process by which colleges were granted charters. And to this I want to add the impact of the failure during the same period to establish a national university, the University of the United States, as recommended by George Washington and his successors in the presidency, and also the ground-breaking decision of the Supreme Court in the Dartmouth College Case, which prevented the takeover by the State of New Hampshire of a (then) weak “private” college.

THE COLONIAL EXPERIENCE IN AMERICA

From the very beginning of Western universities in the early 13th century, a charter to a university was a grant of authority (by whoever had the power to grant that authority) to grant degrees. And those degrees carried certain valuable privileges with them. Charters to universities were a grant of a monopoly to grant degrees in a geographical area. They were much like the charters granted as a monopoly to other guilds of masters who were providing other goods and services in the towns in which they were located. American colleges and universities still carry the marks of the medieval and early modern guilds of masters of teaching, learning and degree granting that universities once were. While colleges and universities underwent many changes between the 12th and 17th centuries, charters in the American colonies were still a monopoly grant to an institution of the power to grant degrees in a specific colony.

The geography of America’s Eastern seaboard, and the accidents of settlement, created a series of distinct and largely self-governing colonies, each tied to metropolitan London through a charter and governor, yet separate from one another in character, social structure, and forms of governance. That, in turn, meant that when colonial colleges were established, they differed from one another in their origins, links to colonial government, and denominational ties (Herbst 1982). There was no central government on the American continent with broad jurisdiction over them all, and thus no governmental body that would accept responsibility for ordering and governing an emerging class of institutions in similar ways, in response to a common law or governmental policy. Indeed, even after a Federal government emerged in 1789, the Constitution explicitly renounced its authority over education, including higher education, delegating that power to the constituent states.

That self-denying ordinance was reinforced during the early years of the Republic when an attempt to create a national university in the capital was defeated, thus preventing what might well have introduced formal and informal constraints on the creation of new colleges and universities after the Revolution (Trow 1979). So the colonies had the experience, before the Revolution, of a multiplicity of colleges or “university colleges,” similar in certain respects but differing in others, without any overarching authority. They had also the experience of having created these institutions of higher education at the initiative or with the encouragement of public authorities and powerful private constituencies.

¹ An introduction to this large subject can be found in Rudolph, 1977. But there is little dispute that by the standards of European universities, the standards in most American colleges during this period were low, and highly variable. For a different perspective, see Potts, 2000, 37-45.

For Americans the colonial experience was a training in the arts of establishing institutions of higher education. And the skills and attitudes necessary for the creation of new colleges that were gained in the colonial period, along with the models of governance provided by the older institutions, led directly to the proliferation of colleges and universities after the Revolution: sixteen more between 1776 and 1800 and literally hundreds over the next half century (Robson 1985, 187).

The eight colonial colleges differed widely among themselves, among other things in their denominational ties. In a sense, these early and most prestigious American colleges, the nurseries of so many of the Revolutionary leaders, legitimated diversity. But similarities also existed. The colonial colleges had to be created in the absence of a body of learned men. In the new world no guild of scholars existed, no body of learned men who could take the government of a college into its own hands. Harvard had been established for more than 85 years before it had its first professor, beyond the president; Yale for more than 50. They were assisted by a few young graduates, who spent a few years teaching before moving on to other careers. The very survival of the new institutions in the absence of buildings, an assured income, or a guild of scholars required a higher and more continuing level of governmental interest and involvement for institutions that had become too important to the colonies for them to be allowed to wither or die. Moreover, a concern for doctrinal orthodoxy, especially in the seventeenth century, provided further grounds for public authorities to create governance machinery in which its own representatives were visible, or held a final veto and continuing "visitorial" and supervisory powers (an inheritance from Britain, where bishops frequently performed the function of safeguarding the wishes of founders and benefactors). The medieval idea of a university as an autonomous corporation composed of masters and scholars was certainly present in the minds of the founders of colonial colleges, but the actual circumstances of colonial life forced a drastic modification in the application of this inheritance.

With the exception of New Jersey, which, because of religious diversity chartered two colleges, each colony granted a monopoly position to "its" college. In this respect, each colony behaved towards its college as England behaved towards Oxford and Cambridge, and Scotland towards its universities. American colonial governments prevented the appearance of rival and competitive institutions, in much the same way that the government in England had prevented the emergence of competitors to their two universities by not giving charters to the dissenting academies that were springing up about that time.² The colonies varied, between themselves and over time, in the extent of their denominational diversity; some colonies, like New York and Rhode Island, had no established church. But even without the religious issue, so important in constraining

² The English dissenting academies were created by non-Anglican Protestants in the late 18th, early 19th centuries. These dissenting academies resembled the colonial colleges in their closer connections with the society and its occupations. But without charters and the power to grant degrees, the dissenting academies never emerged as serious competitors to the universities and were destined to failure and eventual extinction (Rothblatt and Trow, 1992; Armytage 1955; B. Smith 1986; Parker 1914, 124-136; Mercer 2001). But their existence - and relevance - was noted in the colonies, and reference was made to them as better models than the two ancient English universities during a dispute at Yale in the 1750s over sectarian issues (Herbst 1982, 77). As models they were even more relevant to the proliferation of American colleges on the frontier between the Revolution and the Civil War, with the significant difference that the American colleges were chartered to grant degrees, of whatever standard, and were sometimes even modestly supported by public authorities.

competition to Oxbridge in England, the first college created in each colony, “the college of the province,” had enough influence and power to block the creation of competitors (Herbst, 128-141).³

Charters expressly reserved for colonial governments a continuing role in the governance of colleges, placing colonial officers directly on boards of trustees, or assigning to the Courts and legislatures the power of review. In addition to gifts and payments from individuals, families or communities, all the colonial colleges were provided with public funds of various kinds, though in varying amounts and degree of consistency. Some received a flat sum or subsidy to make up an annual shortfall in operating expenses or salaries, others assistance in the construction and maintenance of buildings. These subventions reflected an organic connection between the colony and “its” college, and the colonies were not reluctant to use the power of the purse as a constraint on colleges when they were supposed to have carried their autonomy too far. “The autonomy that comes from an independent, reliable, self-perpetuating income was everywhere lacking. The economic basis of self-direction in education failed to develop” (Bailyn, 1960, 44).

The power of colonial governments over their colleges, then, derived from three fundamental sources: the power to give or withhold a charter; the continuing powers reserved for government within the charter; and the power of the public purse. For most of the colleges created after the Revolution, governments, both Federal and state, lost the first two powers, and, for many colleges, most of the third.

THE AMERICAN REVOLUTION

Before 1776 the colonies displayed at least as strong a connection between state and college as was apparent in the mother country, but the relationship changed drastically after the Revolution. In a formal sense, the Revolution transformed colonial governments into state governments and superimposed a national confederacy and then a Federal government on top of them. But at the same time the Revolution weakened all agencies of government by stressing the roots of the new nation in popular sovereignty, the subordination of the government to “the people,” and the primacy of individual and group freedom and initiative. “The individual replaced the state as the unit of politics, ...and the Constitution and Bill of Rights confirmed this Copernican revolution in authority.” And “unlike the 18th-century venture in building a society from the top down, American society after the Revolution originated in a multitude of everyday needs that responded to the long lines of settlement and enterprise, not the imperatives of union” (Wiebe, 1984, 353).

But at least as important as the new conception of the relation of the citizen to state that emerged from independence was the opening of the frontier beyond the Alleghenies, which gave many Americans a chance to walk away from the settled and “European” states that succeeded the old colonies, requiring them to create, indeed invent, new forms of self-government on the frontier (Elkins and McKittrick 1968). Among the

³ “By the middle of the eighteenth century the provincial college had become the standard institution for higher education in the American colonies. It enjoyed the official sanction, if not always the financial support, of the colonial legislatures, and from them derived its claim to a monopoly on higher education” (Herbst 1982, 128).

institutions of the frontier were new colleges, resembling the colonial colleges in some ways but differing in others and linking the recently opened territories to the original culture of the Eastern seaboard. In the 25 years after the Declaration of Independence, 16 colleges were established (and have survived), thus tripling the total number then in existence (Robson, 1983, 323). Of these, no fewer than 14 were created on the frontier. After 1800 the floodgates of education opened, and hundreds of institutions were established in both old states and new territories. The United States entered the Civil War with about 250 colleges, of which about 180 still survive. Even more striking is the record of failure: between the Revolution and the Civil War perhaps as many as 700 colleges were started and failed (Rudolph, 1962, 219).⁴ Most of the colleges founded during this time were small and malnourished, and many collapsed within a few years of their founding.

The reason for this explosion of educational activity was a change in the three conditions that had hitherto characterized government-college relations in the colonial period, and still characterize the relations of government to higher education in most other European nations: restrictive chartering, direct interest by government in the administration and academic quality of colleges and universities, and primary, almost exclusively governmental support of higher education. After the Revolution, in the United States these conditions were replaced by promiscuous chartering, the withdrawal of public interest in most newly established colleges and the absence of consistent governmental support.

The new states, both those which succeeded the old colonies and those carved out of the new lands to the West, did not give a monopoly to any single state college or university, reflecting the quite different relationship of state and societal institutions that emerged from the Revolution. The states granted charters much more readily than had colonies before the Revolution, and on decidedly different terms. Jurgen Herbst tells of efforts in 1762 by Congregationalists dissatisfied with the liberal Unitarian tendencies of Harvard to create a new college in western Massachusetts. The nation's oldest college and its Overseers successfully opposed the proposal, using the argument that Harvard "was a provincial monopoly, funded and supported by the General Court for reasons of state' and 'properly the College of the Government'" (Herbst, 1982, 136). The principle that preserved a monopoly to the "College of the Government," with its attendant rights and privileges, had to be overthrown for American higher education to break out of the restrictive pattern of higher education that had been historical practice. What is astonishing is not that it was subsequently overthrown, but that it was done with such ease as to scarcely occasion comment. Harvard lost its monopoly in Massachusetts when Williams was founded in 1793, although Yale managed to preserve its special privilege in Connecticut until 1823. But by that time college charters without any

⁴ Historians of the period are divided on how many were in fact created during this period. "During this time (1776- 1861) over 800 colleges were established in this country but only 180 survived to 1900 (Westmeyer 1985, 24). By contrast, Roger Geiger (1995, 56) following Colin Burke (1982), estimates that about 210 colleges were created between the Revolution and the Civil War. (Burke may not have included colleges that died soon after establishment). In 1869, just after the Civil War, the first formal census of higher education institutions counted 563 colleges and universities in the United States (*A Statistical Portrait*, 1998, Table 172). For my purpose it is enough that before the Civil War new colleges were created in the hundreds, and that governments, state and federal, were so irrelevant to these creations that they did not even keep an accurate census of the institutions of higher education established during these decades.

monopoly privileges were being granted easily and casually nearly everywhere else in the United States.⁵

In 1811 The New York Board of Regents was still concerned that "the establishment of a [new] College is also imposing upon the Government the necessity of bestowing on it a very liberal and expensive patronage" (Rudolph, 187). By 1825, however, the Commonwealth of Massachusetts was granting a charter to the new college at Amherst that would declare that "The granting of this charter shall never be considered as any pledge on the part of the Government that pecuniary aid shall hereafter be granted to the College." The casual granting of charters was everywhere accompanied by the denial of continuing governmental responsibility for the survival of the new institutions.

The founding in 1815 of Allegheny College in western Pennsylvania near the Ohio border on the then frontier is illustrative of the founding, freedoms and difficulties that attended the creation of the many new colleges created between the Revolution and the Civil War (E. A. Smith, 1916). A group of the leading men in a village of some 400 people came together to establish a college, as others were doing all over the western frontier, with the usual mixed motives of religious piety and speculation in land values. The initial group who met in the village of Meadville constituted themselves a board of trustees empowered to create an institution that would bring light and learning to their community. The education was to embody what was then a fairly standard curriculum centering upon the study of Latin, Greek, Hebrew, and classical authorities. Since there were few secondary schools in the region to prepare pupils for higher education, the new board decided to admit a class of "probationers," boys and young men who, without being fully matriculated for the degree, would undergo instruction for a year or so. Having successfully completed their probationary period, they would be admitted to the college's first class.

The self-appointed trustees of the newly created college applied to the state government of Pennsylvania for a charter. However, without waiting for one to be granted, they immediately appointed a president, a Congregational minister, graduate of Harvard, headmaster of an eastern secondary school, and cousin of one of the founders of the college. The founders appear to have had no doubt about gaining a charter, nor much doubt about the possibility that money would be granted by the state legislature, where local representatives would press their case. They appointed a second professor - a local clergyman - and subscribed to the endowment themselves. On the very day of his appointment, the new president of the college was authorized to solicit gifts "in such parts of the United States as may be deemed proper" (E. A. Smith, 18). A fund-raising tour took him immediately eastward to New England and New York, where he raised some \$2,000 in cash and books to add to the \$4,000 subscribed by the founders and their friends. As expected, the state of Pennsylvania contributed an additional \$2,000 on the occasion of the grant of a charter.

⁵ The "old-time" pre-civil War college could be found all over the United States. But "it had different histories on the eastern and western sides of the Appalachians." In the East, closer to Harvard, Yale and Princeton, to the wealth of the former colonies and their middle and upper middle classes, the post-Revolution establishments were generally stronger academically and financially. In curriculum they generally preserved "[a] narrow focus on pre-professional liberal education, despite mounting clamor for reform. In the West the old-time college was a loose model that covered numerous permutations of the classical ideal. There the dominant mode was the dynamic growth in the number of institutions" (Geiger, 1992).

Nevertheless, Allegheny remained in perennial financial difficulty for decades, and its history is marked by constant and almost always unsuccessful appeals to the legislature for support, despite the fact that the charter placed the governor, the chief justice, and the attorney general of Pennsylvania on the board of trustees *ex officio*. The continuing poverty of almost all American colleges after the Revolution, and the lack of firm guarantees to their survival by public authorities, were crucial to their self-conception and to their relations with the surrounding society. The absence of assured support shaped their responsiveness to the interests of their internal and external constituencies, the numbers and social origins of their students, and the numbers and character of the faculty recruited to teach. The president of Allegheny, in an effort to provide for endowed chairs, approached a local society of Masons, which he had helped found in 1817, and there was talk of establishing an Architectonic Mathematical Professorship. An attempt was made to induce the Germans of Pennsylvania and other parts of the United States to raise a fund "for a learned professor, whose duty it shall be, not only to teach the comprehensive and energetic German language, but to exercise his talents in disseminating the light of German literature and science." A gracious letter in German and English was circulated, and the president's plan was laid before the Lutheran and Reformed Synods, but the college was too distant from the German centers of population, and the plan failed (E. A. Smith, 53-4). The college did not gain financial security until it accepted the patronage and authority of the Methodist Church in 1833.

The founders of Allegheny College, though frontiersmen, were what the eighteenth century would have considered "gentlemen," well-educated and not poor farmers. A leading figure had been an officer in the Continental Army. It is also worth noting that the new college president, his cousin on the board, and probably other board members as well, all had interests in a large tract of nearby land being sold by a land development company in parcels to new immigrants to the Northwest Territories. The president of the college had earlier visited that area, and on his return to the East had written fliers and advertisements for the company. Land speculation was and remained a central element in American life, and was so not only in the foundation of Allegheny College, but also in the development of higher education throughout American history. Land speculators all through the western movement assumed that the creation of a college in a region would make property more attractive to immigrants, and thus more valuable. That attitude speaks to the commercial spirit of the society at large, the unembarrassed way in which that spirit could be linked to the establishment of cultural institutions, and the way in which both culture and commerce could be seen to be defenses against the barbarism which threatened to overwhelm Americans as they moved yet farther away from the secure centers of civilization in the East Coast and Europe.

The founders of Allegheny received their charter from the state of Pennsylvania in 1817, two years after the founding of the college, though by that time it was already in operation. And they received it, along with a small subvention from the legislature, the last of its kind, with no questions asked about the institution's academic standards. It was enough that the first president was a Harvard man. By 1866, half a century later, the chartering of a college in some states had become a mere bureaucratic routine (Hilleman, 2001). When in that year the founders of Carleton College in Minnesota drew up the articles of incorporation of Northfield (later Carleton) College, they simply filed it with the local Register of Deeds, and then, with the names of 12 trustees appended and a 5-cent revenue stamp affixed, they lodged it with the Minnesota Secretary of State. They were in business - and that is not a metaphor.

Allegheny College was among the first of the hundreds of private liberal arts colleges founded between the Revolution and the Civil War, and among the minority that has survived and flourished. Carleton College was among the last of those colleges – it was in all respects a pre- Civil War College whose opening had been delayed by the War – with a loose denominational connection. On the whole, though with exceptions, denominational links were looser the later the founding. In Carleton's case its connection to the Congregational Church which had sponsored its creation had been thrown off within a few years of its founding, as Protestant denominational ties became weaker and as other sources of support became available. Carleton College not only survived but has become one of the leading liberal arts colleges in the country, with an endowment currently of about a half a billion dollars for a student body of about 1700. During the difficult years of its founding, it also attracted the interest of a land speculator, but found instead an early benefactor who did not need to profit directly from its establishment.

The ease with which new colleges were granted charters after the Revolution, and especially after about 1820, was both symbol and instrument of the triumph of society over the state after the Revolution. Despite the efforts of the Federalists, central government itself over time came to be not the dominant institution in society (alongside the churches), but merely one player in social life, and not a very important one at that. By the fifth decade of the nineteenth century, the national government was scarcely visible in American life: “no [national] bank, no military worth mentioning, no taxes that a growing majority of citizens could remember paying its officials” (Wiebe, 1984, 353). And even state governments, closer to the people and with constitutional responsibility for education, confined their role to serving as the instruments of groups and interests in the society at large, including those who wanted to create colleges for a whole variety of motives: cultural, religious, and mercenary, in all weights and combinations.⁶

TWO NOTABLE FAILURES OF GOVERNMENT IN HIGHER EDUCATION

The proliferation of new, mostly weak, colleges after the Revolution did not happen without two significant efforts by government, one by the Federal government and the other by a state, to play a more traditionally authoritative role in the world of higher education. The first of these, the proposal to create a national university at the seat of government in Washington, was an effort to give to the federal government an institution for nation-building which would discipline and coordinate all the other institutions of higher education in the country, a capstone university whose recognition (we would now say “accreditation”) would give direction and standards to the whole of American secondary and post-secondary education. The second was the effort by the State of New Hampshire to reorganize and reconstitute Dartmouth College as a state institution, something closer to a provincial college than Allegheny College or the many other

⁶ After the Revolution, and for reasons similar to that in higher education, “America went wild in the creation of new banks. Twenty-five banks were established between 1790 and 1800, including the Bank of the United States. Between 1801 and 1811, when the Bank of the United States was allowed to die, sixty-two more banks were established by the states. By 1816 the number of state-chartered banks had increased to 246, and by 1820 it exceeded 300.... In 1813 the Pennsylvania legislature in a single bill authorized incorporation of twenty-five new banks. After the governor vetoed this bill, the legislature in 1814 passed over the governor’s veto another bill incorporating forty-one banks” (Wood, 316-317).

"private" foundations being created at about the same time. The first effort was defeated by the Congress, the second by the Supreme Court.

The idea of a national or "Federal" university was born around the campfires of the Continental Army, but first given expression by Benjamin Rush, a prominent physician and patriot of Philadelphia (Rush, 1788, in Hofstadter and Smith, 1961, 152-157; Madsen 1966, 130-139). The idea gained its strongest supporter in George Washington, who urged it on the Congress in his first and last messages (1790 and 1796), and made a contribution towards it in his will. He argued that a University of the United States would promote national unity, save young Americans the expense and bother of going abroad for their higher education, promote their attachment to republican forms of government, and provide the basis for one really first-class university in a country already possessing a goodly number of institutions, all too small and poor to be competitive with the leading European institutions. As he noted in his final message to Congress:

Our Country, much to its honor, contains many Seminaries of learning highly respectable and useful; but the funds upon which they rest, are too narrow, to command the ablest Professors, in the different departments of liberal knowledge, for the Institution contemplated, though they would be excellent auxiliaries. (Hofstadter and Smith, 157-159)

The presidents and graduates of Harvard, Yale and Princeton were not happy to hear their beloved colleges being patronized as "seminaries of learning" useful as "excellent auxiliaries" – and this from a man however honored who had never even gone to college, much less graduated from one! And while correct in his diagnosis of the need for a first-class university in the new republic, Washington underestimated the hostility in Congress to any attempt to strengthen the power of Federal institutions, especially one which would have such clear implications for the creation and development of local, state, and regional colleges and universities. Moreover, it sounded to them, as to us, as a way of training an educationally qualified civil service.⁷ That is the last thing those early congressmen wanted; they wanted a weak central government and a spoils systems. They got the spoils system in the form of a relatively weak civil service in relation to the number and power of political appointees in each new federal administration.

Washington and his allies had in mind a genuinely progressive institution, with a more modern curriculum than could be found at that time in any of those "excellent auxiliaries" that are now Ivy League universities. But the failure of the University of the United States ensured that the burgeoning colleges and universities being created would be weak academically as well as financially. While American colleges were modeled on British and Scottish university colleges, "they could expect much less from students in the way of secondary preparation and cultural background, and they were equipped to carry their students a much shorter part of the way toward profound knowledge or serious scholarship" (Hofstadter and Metzger, 1955, 226). But the most substantial impact of the failure to create a national university arose out of its effects on the link between higher education and government. "One of the most serious obstacles to university development in the United States was the fact that higher education had no organic

⁷ "Benjamin Rush had already urged in 1788 that thirty years after the establishment of a national university only those who held degrees from it should be eligible for elective or appointive office" (Welter, 26).

relation to careers in civil service and diplomacy, as it had in England and some continental countries. Thus the spoils system and “democratic” rotation in office deprived American higher education of much of the potential importance of university work....”(ibid.) .

Despite efforts to bring the issue back to the Congress by all five of Washington’s successors right up to Andrew Jackson,⁸ who of course would not hear of it, a national university was never created. While suggestions to create a University of the United States were not accompanied by proposals to give it a monopoly over higher degrees, it would surely have been, in colonial terms, “the Government’s university,” and as such would have had profound effects on all of American higher education. Its standards of entry, curricula, educational philosophies, and forms of instruction would have provided models for every college or “seminary” which aspired to send some of its graduates to the university in the Capitol. A University of the United States might well have established national academic standards for the bachelor’s degree, for the qualifications of faculty, even conceivably for entry to higher education, and in these ways have greatly influenced the character and curriculum of secondary feeder schools. Eventually a national university might have shaped and constrained the growth of graduate education and research universities. It would surely have been the central instrument of Federal government policy regarding higher education in the Union. Therefore the defeat of the idea of a University of the United States was arguably the most important policy decision affecting the role of central government in American higher education, determining or at least conditioning the character of all future Federal government interventions.

Like a character in a zombie movie, you couldn’t kill the idea – it kept coming back to life throughout the century. In 1873 President Eliot of Harvard was still speaking against the creation of a tax-supported national university. I suspect he could hear the echoes of Washington’s implicit reference to Harvard as one of those “many seminaries of learning highly respectable and useful” that would be even more useful as “an excellent auxiliary” to the national university.

The defeat of the idea of a central federal university needs to be discussed together with a second event of momentous consequence, the decision by the Supreme Court in 1819 in the case of *The Trustees of Dartmouth College v. the State of New Hampshire*, for this too had a profound effect on the place of public authority in the development of an American higher education system (Whitehead 1973; Herbst 1982; Whitehead and Herbst 1986). The New Hampshire state government seized the occasion of a dispute between the President of Dartmouth and its Trustees to attempt to change the college charter in order to bring public representatives directly on to the board. Other changes affecting the governance of the college, its curriculum, and sectarian linkages were also in train. New Hampshire maintained that although Dartmouth may have been established in colonial times as a “private” corporation, it was founded to benefit the people of the state. Consequently, the public, through the state’s legislature, deserved and required a voice in the operation of the college. The State of New Hampshire intended to “improve” Dartmouth as a place of learning by modernizing its administration and curriculum, creating the framework for a university, and encouraging a freer, non-sectarian atmosphere. Like the University of the United States, this would have been a distinctly progressive reform in higher education.

⁸ For example, President James Madison urged the adoption of a national university in his addresses to Congress in 1810, 1815, and 1816 (Appleby, 123).

The Trustees of the College, claiming that the State of New Hampshire was illegally modifying Dartmouth's original charter, took its defense to the US Supreme Court, where their position was upheld in a landmark decision written by Chief Justice John Marshall. He wrote that the college was a "private" rather than a "civil" corporation, and affirmed the sanctity of the contract (as embodied in its charter) between the state and Dartmouth.⁹ In attempting to change the charter, the legislature, he continued, was substituting its own intentions for those of the donors; and the consequence, in his opinion, was that the college would be turned into "a machine entirely subservient to the will of government" (Hofstadter and Smith 1961, 219). Marshall expressly affirmed the rights of private property over the implicit links of a colonial establishment with its charter-granting government. In this judgment, Dartmouth was not the "Government's College," as the original colonial colleges had so long been. On the contrary, it was the exclusive possession of its Trustees.

The Supreme Court decision, preventing the State of New Hampshire from taking over the institution or altering its charter, had the practical effect of safeguarding the founding and proliferation of "independent" colleges, even poor and weak ones. Thereafter the founders and promoters of private colleges knew that once they had obtained a state charter, increasingly easy to do, they and their successors were secure in the future control of the institution. After this decision, state control over the whole of higher education was no longer possible. The legal basis for the extraordinary proliferation of privately founded and governed higher education institutions in the United States was now in place; henceforth they were secure in their poverty and precarious life chances.¹⁰

The failure of the University of the United States and the success of Dartmouth College in its appeal to the Supreme Court were both victories for local initiative and for private entrepreneurship. The first of these set limits on the role of the federal government in shaping the character of the whole of American higher education; the second even sharper limits on the power of the state over private colleges. Together, these two events constituted a kind of charter for unrestrained individual and group initiative in the creation of colleges of all sizes, shapes and creeds. Almost any motive or combination of motives could bring a college into being between the Revolution and the Civil War; and thereafter its survival depended largely on its being able to secure support from a church, from wealthy benefactors, from student fees and even perhaps from the state. The colleges thus created were established relatively easily, but without guarantees of survival. And as a result, there arose a situation resembling the behavior of living organisms in an ecological system – competitive for resources, highly sensitive to the demands of the environment, and inclined, over time, through the ruthless process of

⁹ The ante-bellum colleges, including Dartmouth, were neither "private" nor "public". All of them continually appealed for money from all possible sources, with variable success. For example, "Dartmouth College's trustees requested that the state legislature pay their legal costs, after supposedly winning a clear distinction between the public and private sectors" (Mattingly, 1997, 80).

¹⁰ Both the University of the United States and the transformation of Dartmouth College into an institution primarily governed by the state of New Hampshire would have been "progressive" reforms in the American context. Most modern students of higher education, including myself, would have supported both actions at the time. But while we would have been right in the short term, we probably would have been wrong in the long term, for reasons discussed above. That suggests that we should view the advice of "experts" on policies for higher education with caution and skepticism.

natural selection, to be adaptive to those aspects of their environment that permitted their survival. Their environment also has included other colleges, and later, universities. So we see in this frog pond a set of mechanisms that we usually associate with the behavior of small entrepreneurs in a market: the anxious concern for what the market wants, the readiness to adapt to its apparent preferences, the effort to find a special place in that market through the marginal differentiation of the product, a readiness to enter into symbiotic or parasitic relationships with other producers for a portion of that market. That is, to this day, the world of American higher education.

America is, and has been from the beginning, an acquisitive society, confronted by a continent whose ownership had not been settled by sword and custom since medieval times. In America, as Louis Hartz noted, the market preceded the society, a central and powerful fact whose ramifications can be seen in all of our institutions and throughout our national life (Hartz, 1955). In American higher education this tendency only became manifest after the Revolution. With the loosening of the constraints of state chartering, it became a network of institutions which in many respects resembled in its behavior the myriad of small capitalistic enterprises that were springing up (and often failing) at the same time and in the same places, and often in response to the same forces.

American “policy” toward higher education did not change fundamentally even as federal government took on greater functions and power after the Civil War, and even more recently. Without elaboration, we can point to three further landmarks in American history: the Morrill or Land Grant Act of 1862 and the similar Hatch Act of 1887, the GI bill after WW II, and the Higher Education Amendments of 1972 which created the broad spectrum programs of federal student aid still in place, much amended and expanded. Like the cases that I discussed in more detail, in each case the decision contributed to the diversity of American higher education – a diversity of type, of educational character and mission, of academic standard, and of access. In each case public policy tended to strengthen the competitive market in higher education by weakening any central authority that could substitute regulations and standards for competition. It accomplished this by driving decisions downward and outward, by giving more resources and discretion to the consumers of education and the institutions most responsive to them. The policies strengthened the states in relation to the federal government, as in the defeat of the University of the United States and the passage of the Morrill Act; it strengthened the institutions in relation to state governments, as in the Dartmouth College case and the Hatch Act; and it strengthened the students in relation to the institutions, through the GI Bill and the Higher Education Amendments of 1972, which, against the advice of all the national organizations of colleges and universities, brought broad federal support to higher education through student aid rather than through institutional support.

American policy for higher education over two centuries has in the short term subordinated issues of academic quality to the overriding consideration of institutional survival. That led in the short term to the proliferation of weak institutions, and, of necessity, to the diversification of the sources of institutional support. And that in turn has been a surer basis for the autonomy of our institutions than the pleasure of the state or of tradition. American doctrine in higher education, as in much else in its national life, has been, “Something is better than nothing,” trusting to time to correct and improve the modest initial establishment.

CONCLUSION

The early settlers in the American colonies were highly motivated to create colleges. They created them, as closely as they could, to the English models that they knew. But they created one for each colony, each governed and financed in somewhat different ways, a lesson in diversity. And each mixed public and private funds in ways that were a precedent throughout the history of American higher education.

After the Revolution, as the constraints of chartering were loosened, many new colleges were founded in conditions of poverty and insecurity. The young colleges created in the West were created out of a mixture of motives: the desire of denominations to provide education for their church leaders and communicants, land speculation by founders, settlers' fear of the loss of civilization at the frontier, and "boosterism."¹¹ Whatever the motives of their founders, the new colleges needed students for their tuition, and they needed institutional support. Many found it in a denominational connection. But all these colleges learned from churches, which in America had no state support, how to beg; they begged from their neighbors, from members of their affiliated church, from local and state governments and later from the federal government, from their students and later from alumni, who were, in a way, surrogates for communicants. Like American churches, so the colleges, old and new, survived by begging with no more shame than is attached to passing the collection plate in church. But despite their often desperate efforts at survival, including low standards of student admissions and performance, and miserable salaries for teachers, most of the colleges created after the Revolution did not survive. The pressures for growth and the diversification of missions, functions and academic standards, arise from those fundamental conditions of survival.

For the surviving colleges, both public and private, the autonomy arising from the weakness or absence of constraint and the paucity of support by government has enforced their dependence on the markets for students, and the affections of their alumni. But alumni and their support only developed after the Civil War, when with the elective system and "school spirit" they have learned to continue to support "their colleges" long after they graduate, and more generously as their own fortunes improve with age.¹²

Despite the large number of colleges created during the pre-Civil War decades, the actual number of students enrolled in those colleges was very small – no more than thirty or forty thousand in 1860, and somewhat over 50,000 in 1870, under 2% of Americans aged 18-21 (*A Statistical Portrait*, op. cit.). Without links to government or to the old professions apart from the church, there was little incentive for young men to go

¹¹ "Boosterism" is "the belief that the future could hold anything or everything. And especially a faith in the uniqueness of the booster's own community" (Boorstin, 273). It was the tendency on the part of founders and supporters to anticipate the growth and success of any enterprise – towns, business enterprises, colleges - and to celebrate that success publicly, noisily, prematurely, as part of a strategy of achieving the success being celebrated. The establishment of a college was evidence for the future growth and success of the surrounding community.

¹² A college that survived through the Civil War could hope to establish an endowment by gifts from alumni, friends, business firms and other foundations. As one economist of higher education has observed, "... the strength of the non-profit institution, the basis of its independence and power, is the financial security and support provided by the endowment trust. Originating in a private philanthropy encouraged by government, the existence of the endowment makes possible a freedom from both public and private support at any point in time" (Hall, 505).

to college when there was so much else to do in the new country. But the founding, organization and funding of the old-time pre-Civil War colleges provided a template for the expansion of American higher education after the Civil War, and especially for the enormous expansion after WW II. The forces that shaped the early colleges are still present in the character and diversity of American higher education. Many changes followed the emergence of the American research university after the Civil War, but American colleges and universities, and the system as a whole, still bear defining characteristics that they gained during the century and a half as colonies and the decades between the Revolution and the Civil War.

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